

United States District Court
For the Northern District of California

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6 CLAUDIA SANCHEZ, ERIN WALKER
7 and WILLIAM SMITH, as individuals and
8 on behalf of all others similarly situated,

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10 No. C 07-05923 WHA

11 Plaintiffs,

12 v.
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14 WELL'S FARGO AND COMPANY,
15 WELL'S FARGO BANK, N.A., and DOES
16 1 through 125,
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18 ORDER RE DEFENDANT'S
19 LETTER RE
20 DISQUALIFICATION AND
21 REFERRAL FOR RANDOM RE-
22 ASSIGNMENT TO ANOTHER
23 JUDGE FOR DECISION

24 Defendants.

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26 The Court has received a letter dated January 26, 2009, from counsel for Wells Fargo. It
27 is true that the undersigned was counsel for Crocker National Bank in litigation brought by
28 plaintiffs Perdue and Abascal in the early 1980s, as the Court mentioned in a hearing early on
herein. That litigation, which ended decades ago, was over the amount of overdraft fees. The
main theory pursued there was whether the NSF fee amount charged was "unconscionable"
under state law and whether the signature card was a "contract." The case went all the way to
the California Supreme Court and the undersigned argued for appellee banks. The *Perdue*
decision was rendered in 1985. The matter settled thereafter.

26 The letter states that plaintiff's counsel is inquiring into the sequencing method the bank
27 used before 1998. Even if the sequencing method used by Wells Fargo is relevant to the instant
28 litigation, the undersigned is aware of no confidential information, or for that matter any non-
confidential information on the subject, learned by the undersigned from representation of

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1 Crocker National Bank in the 1980s that could bear upon the issues at hand. It should also be
2 remembered that when Wells Fargo acquired Crocker National Bank in 1986, the undersigned
3 was phased out of the litigation in favor of other counsel for Wells Fargo.

4 If it is indeed true in this case that the posting sequence used before 1998 is relevant
5 herein, the undersigned is nonetheless aware of no personal knowledge by him that would bear
6 upon those practices, is aware of no service in private practice that was directed to a sequencing
7 method, and is aware of no way he would be a witness in the instant case. All that he knows
8 about this matter is what counsel have provided to him in this litigation and, of course, what any
9 consumer with a deposit account would learn from ordinary life experience.

10 Out of an abundance of caution, the Court will treat counsel's letter as a motion to
11 disqualify and will refer the motion to the Clerk for reassignment and disposition. In the
12 meantime, we will proceed with litigation and all deadlines must be met.

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IT IS SO ORDERED.

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Dated: January 27, 2009

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE